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Paper No. 15  
TEH

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re **Steven Hoffer**

Serial No. 75/681,974

Steven Hoffer, pro se.

Priscilla Milton, Trademark Examining Attorney, Law Office 110  
(Chris Pedersen, Managing Attorney).

Before **Simms**, Hanak and Holtzman, Administrative Trademark  
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Steven Hoffer to register  
TRADE FORUM as a mark for the following services:<sup>1</sup>

Provides a private network service for message exchange,  
featuring private access thereto, and licenses for the use  
thereof, to host message transmissions among persons or  
servers, for enterprises which seek, to exchange, store and

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<sup>1</sup> Serial No. 75/681,974; filed April 15, 1999 on the Principal Register alleging a bona fide intention to use the mark in commerce. In accordance with the Board's interlocutory action dated January 12, 2001, the mark in this case remains as two words, TRADE FORUM.

forward messages with, or to filter messages from, other enterprises with the aid of a public index used to divide economic activity into commonly known industrial sectors. Class 38.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark is merely descriptive of applicant's services.<sup>2</sup>

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested.

The Trademark Examining Attorney argues that TRADE FORUM describes a significant feature and/or characteristic of the services, namely a medium and/or place for discussion about trade. In support of her position, the Examining Attorney has submitted a dictionary definition of "forum" as "an assembly, place, radio program etc for the discussion of public matters or current questions" and "trade" as an adjective meaning "of or relating to trade or commerce."<sup>3</sup> In addition, the Examining Attorney made of record two third-party registrations wherein the word FORUM for online services has been disclaimed and five other

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<sup>2</sup> Applicant had also appealed the Examining Attorney's final requirement for an acceptable recitation of services. That issue was subsequently resolved by an Examiner's Amendment dated February 14, 2001 and the recitation was amended as indicated above.

<sup>3</sup> *Webster's New World Dictionary of American English* (1988 3<sup>rd</sup> ed.). This evidence was attached to the Examining Attorney's appeal brief. The Board may properly take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

third-party registrations for meetings and presentations in general which also contain disclaimers of the word FORUM.

Applicant, on the other hand, contends that TRADE FORUM is a combination of "amorphous" terms which either individually or combined, are only suggestive of his "electronic communications service" and that the Examining Attorney has improperly dissected the mark in finding it to be descriptive. Applicant submitted with his brief a dictionary listing (of which we take judicial notice) defining "forum" as "a medium (as a newspaper) of open discussion or expression of ideas."<sup>4</sup> Applicant claims that there is also a definition of "forum" as "a place of or meeting for public discussion" and a variety of definitions of "trade" which, according to applicant, have no relation to telecommunications.<sup>5</sup> Applicant also made of record a copy of his patent (No.

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<sup>4</sup> *Merriam-Webster's Collegiate Dictionary* (10<sup>th</sup> ed. 1993).

<sup>5</sup> Applicant indicates that these definitions were obtained from *The Oxford Dictionary and Thesaurus* (Oxford Pub. 1996). Although copies of the relevant pages from the cited dictionary have not been submitted, for purposes of this decision, we will assume that the word is defined as applicant claims.

5,799,151) covering applicant's method for his "store-and-forward" message exchange service.<sup>6</sup>

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods or services with which it is used. In *re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). It is not necessary, in order to find a mark merely descriptive, that the mark describe every feature, function or characteristic of the services, only that it describe a single, significant aspect thereof. In *re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Moreover, the question of whether a particular term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought. See *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986).

We agree with the Examining Attorney that the term TRADE FORUM, when applied to applicant's online message exchange services, immediately and without conjecture, describes a

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<sup>6</sup> Applicant also submitted with its brief a list of third-party applications which the Examining Attorney has properly objected to as untimely. Accordingly this evidence has not been considered. Despite applicant's contention, we do not find that the dispute regarding applicant's recitation of services in any way prevented applicant from timely making this evidence of record in accordance with the applicable rules. In any event, even on the merits, the evidence is unpersuasive. Third-party applications, as opposed to registrations, are generally not probative.

significant aspect of those services, namely that applicant is providing an online forum for the exchange of trade information.<sup>7</sup> We do not find either term to be vague or "amorphous" in relation to the identified services. The dictionary definitions provided by applicant and the Examining Attorney define the word "forum" as a "place" or a "medium" for the "open" or "public" discussion or exchange of ideas. Applicant argues that he offers a "virtual medium" for his services rather than a "place" or physical forum on trade; that the word FORUM, unlike a radio program, a newspaper, or other discussion medium that implies unrestricted public access, merely suggests his "private" service; and that this private use is inconsistent with the public connotation of forum. We believe that the electronic format used in rendering applicant's service is essentially the online equivalent of a physical facility. In any event, the meaning of "forum" as a "medium" for discussion is flexible and certainly broad enough to encompass a less traditional format than a newspaper or a brick and mortar conference hall. In fact, the word "medium" itself is very broadly defined as "a means of mass communication..." and we note that the "Internet" is used in connection with that definition as an example of a communications "media" (the

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<sup>7</sup> We would also point out, in this regard, that while the numerous cases cited by applicant may provide guidance in determining whether a particular designation is descriptive, those particular cases are not factually analogous to the present case and thus, do not mandate a finding that the present mark is not descriptive.

alternative singular form of "medium") as follows: "The Internet is the most exciting new media since television."<sup>8</sup>

As to applicant's contention that he is providing a "private" rather than a "public" discussion on its website, we note that one of the dictionary references relied on by applicant defines "forum" as an "open" discussion, rather than a "public" discussion. Moreover, the meaning of "public" includes the "relevant" public as well as the "general" public.<sup>9</sup> The relevant public in this case would be the segment of the public for whom applicant's services are intended, that is, the subscribers to or otherwise authorized users of those services.

In addition, we find that the two third-party registrations containing disclaimers of FORUM for services involving the online exchange of information (OPTUM HEALTH FORUMS with "HEALTH FORUMS" disclaimed; and UF UROLOGY FORUM and design with "UROLOGY FORUM" disclaimed) provide some additional evidence of the perception of the word "forum." While third-party registrations are not conclusive on the question of descriptiveness, they may be used to show that there is a commonly understood meaning of a word and

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<sup>8</sup> We take judicial notice of *The American Heritage Dictionary of the English Language*. (4<sup>th</sup> ed. 2000)

<sup>9</sup> We take judicial notice of the definition of "public" as: "A group of people having common interests or characteristics; *specif*: the group at which a particular activity or enterprise aims." *Webster's New Collegiate Dictionary* (1979).

that a word has been chosen to convey that meaning. See *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991).

Applicant further argues that he provides a communications service "distinct from trade and general business services"; that his communication services are not "restricted to trade, any more than is a telephone conversation"; and that in any event the term "trade" has multiple meanings, none of which denote communications services. It is clear that the word "trade" would be perceived as descriptive term as evidenced by the dictionary definition of "trade" as an adjective meaning "of or relating to trade or commerce." Purchasers of applicant's services would understand that applicant is not providing a "trading" service but rather a service which allows for the exchange of trade information.

Applicant maintains that TRADE FORUM, as a whole, is incongruous because it is a combination of "amorphous terms that are each susceptible to denoting multiple disparate meanings, but not telecommunications." Applicant claims that "those who initially consider the service called 'Trade Forum' would rarely imagine an interactive on-line service driven by a database ... that relies upon a unique algorithm for industry topics or be able to guess the actual patented method" or the services provided by applicant based upon the combined term.

We disagree that there is anything incongruous about the combined term "TRADE FORUM" that would make it less descriptive than the individual words. In fact, the combination of these words provides a more specific description of the services than either word alone. Applicant's patent provides further evidence that the relevant public would be likely to attribute the ordinary dictionary meaning of TRADE FORUM as a whole to applicant's services. The patent is entitled "Interactive Electronic Trade Network and User Interface" and the patent abstract describes the invention, in part, as follows (emphasis added):

An interactive trade network ... [that allows for] ... real-time interactive communications.... ... The apparatus creates ... a **media** for either (a) messaging on mutually exclusive indexed **topics of trade** or (b) engaging in **pub[li]c or private** real-time conferencing or electronic mail dedicated to any class of indexed economic activity. It **enables progressive discussions on**, and the retrieval of just the information needed under, discrete indexed **topics on trade** instantaneously.

Whether the words TRADE FORUM either alone or in combination have "multiple disparate" meanings or whether anyone "would ever guess" the actual patented method for providing the service is irrelevant. To begin with, applicant's customers do not need to understand the underlying technology in order to use applicant's services. Moreover, as indicated above, the determination of descriptiveness is not made in the abstract or on the basis of guesswork, but in relation to the particular service for which



registration is sought.<sup>10</sup> In this case, the purchasers of applicant's services would readily understand the descriptive meaning or significance of TRADE FORUM in relation to applicant's services.<sup>11</sup>

**Decision:** The refusal to register is affirmed.

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<sup>10</sup> It is also irrelevant that TRADE FORUM does not describe "telecommunications services." A mark does not have to describe every aspect of a service or be the apt name for the service in order to be merely descriptive. See *In re Eden Foods Inc.*, 24 USPQ2d 1757 (TTAB 1992) and, e.g., *In re Aid Laboratories, Incorporated*, 223 USPQ 357 (TTAB 1984)

<sup>11</sup> Applicant argues that a LEXIS search over the previous ten years shows that the composite term TRADE FORUM "had not been used in any articles by major newspapers in conjunction with any database or network whatsoever." There is no evidence of record to support this claim but, more important, the absence of third-party uses of the term, does not, in any event, make a descriptive term registrable. See *In re Eden Foods Inc.*, *supra*. The fact that applicant may be the only entity using the phrase TRADE FORUM is not dispositive where, as here, the term unquestionably conveys a merely descriptive meaning and would be perceived as such by the relevant public. See *In re Eden Foods Inc.*, *supra*.